THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16828 OF 2006

ORAL ORDER:

The petitioner appeared for EAMCET-2006 for taking admission into the Engineering course and secured rank No.74116. Pursuant to the intimation received from the Convener EAMCET-2006, she appeared for the counselling on 29.7.2006. Since she claimed admission under Scheduled Tribe category claiming social status as 'Konda Dora' (Scheduled Tribe), the 2nd respondent-Convener directed the petitioner to get clearance from the 1st respondent-Director of Tribal Welfare. Accordingly, the petitioner appeared before the 1st respondent, and produced the caste certificate dated 4-6-1993 issued by the Mandal Revenue Officer, Salur, certifying that she belongs to 'Konda Dora' – ST community. However, the 1st respondent, having entertained a doubt as to the genuineness of the social status claimed by the petitioner, advised her to appear before the Director TCR & TI on 10.8.2006, along with her parents, who have full knowledge about her community and to furnish oral and documentary evidence to substantiate the scheduled tribe status claimed by her. To that effect a memo dated 31.7.2006 was issued making it clear that the seat granted to her shall be kept in abeyance until further orders from his Office, and no fees shall be accepted from her until clearance certificate is issued about her claim. In turn, the 2nd respondent made an endorsement withholding the order of allotment of seat. Aggrieved by the same, this Writ Petition is filed seeking a Writ of Certiorari to quash the memo dated 31.7.2006 issued by the 1st respondent being arbitrary, illegal and without jurisdiction.

It is pleaded by the petitioner that for the last two centuries the community of the petitioner's family has been recognized as 'Konda Dora', and that the social status claimed by them was upheld in Writ Petition No.1782 of 1983 and W.A.No.9 of 1986 preferred by the

Government was dismissed. Again in W.P.No.11916 of 1987, this Court directed the Government to treat the grandfather of the petitioner as a member of the Scheduled Tribe, unless a contrary conclusion is arrived at. Till date, the social status of the petitioner's family remained undisputed and, therefore, there is absolutely no justifiable reason to entertain a doubt as to the genuineness of the social status claimed by the petitioner.

The petitioner contended that even in case any doubt is entertained, under the provisions of the Andhra Pradesh (Scheduled Caste, Scheduled Tribe, Backward Classes) Regulation of Issue of Community Certificate) Act, 1993 (for short "the Act"), the District Collector alone is the competent authority to adjudicate the claims of the members of the Scheduled Tribe community and, therefore, the memo issued by the 1st respondent is without jurisdiction and illegal being contrary to the provisions of the Act and the Rules made thereunder vide G.O.Ms.No.58 dated 12.5.1997.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader for Social Welfare appearing for the respondents.

It is true that Section 5 of the Act confers power on the District Collector, either *suo motu* or on a written complaint by any person, to call for the record and enquire into the correctness of a community certificate obtained by a person to the effect that he belongs to any of the S.C., S.T. or Backward Classes. On such enquiry, if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation.

Section 5 of the Act may be extracted hereunder:

*"**5. Cancellation of the false Community Certificate :--***

(1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such Castes,

Tribes or Classes, the District Collector may either suo motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation :

Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending a such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government."

In exercise of the powers conferred under Section 20 of the Act, Rules were made under G.O.Ms.No.58, Social Welfare (J), dated 12.5.1997, which are called the AP SC., ST and Backward Classes -Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short "the Rules").

Rule 9 of the said Rules provides that where the District Collector either receives a written complaint from any person or has otherwise reason to believe that a person has obtained a false community certificate, he shall refer the case to the Chairman, Screening Committee of the District Board formed under Rule 8, to enquire into the said case and send its findings to the District Collector. Thereafter, the Scrutiny Committee shall cause enquiry as provided under sub-rules (3), (4) and (5) of Rule 9, and shall furnish its findings to the District Collector within 60 days, and the District Collector shall then decide whether the certificate holder is genuine or fraudulent.

Sub-rule (10) of Rule 9 provides that in respect of Tribals, the Commissioner of Tribal Welfare, either *suo motu* or on a written complaint by any person or on request made by an employer/educational institution/appointing authority, shall enquire into

the correctness of any community certificate already issued and if it is found that the said certificate is obtained fraudulently shall refer the case to the concerned Collector for its cancellation as per the procedure laid down under Section 5 of the Act.

For proper appreciation, sub-rule (10) of Rule 9 may be extracted hereunder:

> *"In respect of Tribals, the Commissioner of Tribal Welfare, either suo motu or on a written complaint by any person or on request made by an employer / educational institution / appointing authority, shall enquire into the correctness of any community nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, shall refer the case to concerned Collector to the Government for its cancellation as per the procedure laid down Section 5 of the Act."*

It is clear from sub-rule (10) of Rule 9 that so far as Tribals are concerned, particularly when a request is made by an educational institution, the Commissioner of Tribal Welfare is competent to enquire into the correctness of the community certificate and in case he finds that the certificate is obtained fraudulently, then the case will be referred to the concerned District Collector for cancellation under Section 5 of the Act.

The learned Government Pleader for Social Welfare further clarified that the post of Director of Tribal Welfare and the post of Commissioner of Tribal Welfare are of equal cadre and except the nomenclature, both the Commissioner of Tribal Welfare and Director of Tribal Welfare discharge the same functions.

In the circumstances and having regard to the powers conferred on the Commissioner of Tribal Welfare under sub-rule (10) of Rule 9 in respect of community certificates of tribals, it cannot be held that the 1st respondent is not competent to issue the impugned memo.

However, the learned counsel for the petitioner while placing reliance upon Rule 18 of the Rules, vehemently contended that even

assuming that the 2nd respondent entertained a doubt as to the social status claimed by the petitioner, the matter ought to have been referred only to the District Collector for enquiry, since the District Collector alone is competent to verify about the genuineness of the social status claimed by the petitioner and to take action under Section 5 of the Act. The learned counsel contended that no provision under the Act or the Rules empowered the Commissioner of Tribal Welfare to take up any enquiry and to issue the impugned memo, keeping in abeyance the seat allotted to the petitioner.

Rule 18 of the Rules may be extracted hereunder:

> *"**18. Complaints: --** Whenever complaints are received regarding the community claim of any employee/prospective employee/student claiming to belong to a Scheduled Caste/Scheduled Tribe or Backward Class, the appointing authority / employer / educational institution must refer the case only to the District Collector of the District from where the Competent Authority has issued the certificate. The District Collector shall in turn get Rule 08. The District Collector would inform the final action to the appointing authority / employer / educational institution within a period of 90 (ninety) days, from the date of the receipt of the complaint by him/her from the appointing authority / employer / educational institution."*

A reading of the above Rule shows that whenever complaints are received regarding claim of any student claiming to belong to a Scheduled Tribe community, the educational institution must refer the case to the District Collector of the District from where the competent authority has issued the certificate. The District Collector shall in turn, get it verified by the Scrutiny Committee constituted at the district level as per Rule 8 and would inform the final action to the educational institution within a period of 90 days.

Thus, it is clear that Rule 18 is attracted only where a complaint is received by the educational institution regarding the community claim of any student, in which event the educational institution must refer the case to the District Collector of the District from where the

competent authority has issued the certificate. In such cases, the District Collector will get the matter verified by the Scrutiny Committee as per Rule 8 and take the necessary further action.

On the other hand, sub-rule (10) of Rule 9 is a general provision under which, even in the absence of any complaint, a request can be made by an educational institution to enquire into the correctness of community certificate in respect of tribals. On such request, the Commissioner of Tribal Welfare shall make the necessary enquiry and the matter shall be referred to the concerned District Collector if it is found that the certificate is obtained fraudulently.

The object and purpose of sub-rule (10) of Rule 9 and Rule 18 are entirely different and there is absolutely no ambiguity with regard to the circumstances under which they can be invoked.

In the present case, the matter was referred to the 1st respondent not on the basis of any complaint, but when the petitioner sought admission claiming social status as Konda Dora (ST), the 2nd respondent requested the 1st respondent to enquire into the correctness of the community certificate produced by the petitioner. The 1st respondent having entertained a doubt that the said certificate was obtained fraudulently, issued the impugned memo so as to make further enquiry under sub-rule (10) of Rule 9. On such enquiry, in case it is found that the community certificate produced by the petitioner is obtained fraudulently, then the 1st respondent would refer the case to the concerned Collector for its cancellation under Section 5 of the Act. Hence, in my considered opinion, the enquiry has rightly been taken up by the 1st respondent and there is no substance in the contention of the petitioner that the impugned memo is without jurisdiction.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

(G. ROHINI, J.

21st August, 2006.

Furnish CC in three days;
LR copy to be marked.

Kgr

***THE HON'BLE Ms. JUSTICE G. ROHINI**

+W.P.No.16828 OF 2006

Dated 21-08-2006

Between:

Kum. Vijayalaxmi Devi. .. Petitioner.

And

The Director, Tribal Welfare,
Damodaram Sanjeevaiah Sankshema Bhavan,
Masabtank, Hyderabad and another. .. Respondents.

! Counsel for Petitioners: Sri M. Vidyasagar.

^Counsel for Respondents: G.P. for Social Welfare

Sri C. Sudesh Anand

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> HEAD NOTE:

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